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SUBJECT: TAIWAN SPECIAL 301 OCR: AIT VIEWS

REF: A. TAIPEI 0533

[B](#). TAIPEI 1600

[C](#). TAIPEI 2672

[D](#). TAIPEI 2877

[E](#). TAIPEI 3093

[F](#). TAIPEI 3198

[1](#)1. (SBU)Summary: Taiwan authorities charged with protecting Intellectual Property Rights have made substantial progress since the last review in March 2004. AIT recommends reducing Taiwan's current Special 301 classification from the Priority Watch List to the Watch List. Further reductions might be warranted once Taiwan meets its WTO commitments to protect pharmaceutical data, deter on-line piracy, control illegal copying on University campuses, and improve the judicial process to ease prosecution of IPR cases. Taiwan will also need to continue effective enforcement actions against counterfeiting activities. End Summary.

[1](#)2. (U) The period from March to November 2004 has seen Taiwan authorities take significant actions to improve the environment for IPR protection in Taiwan and to continue positive enforcement activities. Most significant of these improvements was the passage of amendments to the copyright law that addressed serious shortcomings in the legal environment for copyrighted materials. Taiwan also created new protections for pharmaceuticals, and stepped up enforcement actions to protect optical media, pharmaceuticals, and branded goods. Increased surveillance by Customs authorities is credited by Taiwan officials with further limiting exports of counterfeit products, and new powers for those authorities should increase their effectiveness. Taiwan institutionalized what had previously been an ad hoc joint task force focusing on retail Optical Disk piracy enforcement and plans to expand its membership, and is drafting plans to create a specialized IPR court. The Department of Health (DOH) drafted and submitted to the Legislative Yuan (LY) a Data Exclusivity (DE) law. Problems still remain, specifically, the failure of the LY to pass DE legislation, the continued operation of P2P sites, continued digital and print piracy on university campuses, and protracted legal procedures that discourage resolution of IPR complaints.

Legal Environment: Copyright amendments

[1](#)3. (U) On August 24, responding to high level lobbying from the government, Taiwan's LY passed amendments to the copyright law that plugged many of the holes left by the 2003 attempt at copyright reform. The new law granted Taiwan Customs ex officio authority to impound suspected counterfeit goods, provided protection for "anti-piracy measures", created minimum sentences for those convicted of commercial piracy, and eliminated arbitrary personal use provisions. Those convicted of violating IPR with commercial intent will now receive a sentence of six months to five years and be fined between USD15,000 and USD150,000. Non-commercial piracy is punishable by up to three years in prison and/or a fine of up to USD22,000. Industry pronounced itself mostly pleased, but noted that the amendments did not address the issue of internet piracy.

Stiffer penalties for pharmaceutical piracy

[1](#)4. (U) On March 30, Taiwan passed amendments to the Pharmaceutical law that increased penalties for producing, distributing or selling counterfeit products. Penalties for producing or importing counterfeit drugs now include imprisonment for up to twelve years and a fine of up to USD750,000, under certain circumstances. This is up from the former maximum penalty of a USD4,500 fine. The penalty for sale or distribution of counterfeit pharmaceuticals is now up to seven years in jail and a fine of up to USD150,000.

Changes to Patent and Trademark laws and regulations

[1](#)5. (U) The Patent Act was amended in February 2003 and revisions took effect in July 2004. The changes make patent applications easier to file, including instituting an

e-filing system, simplified patent litigation procedures, and adopting a post-grant dispute filing system. Trademark examiners were made subject to new regulations requiring them to take into account usage in determining whether the mark is likely to cause confusion. The examination standards for three-dimensional shapes, colors and sounds took effect July 1, 2004.

Establishment of an IPR Court

16. (U) After several months of consideration, the Judicial Yuan has decided to support the creation of a specialized IP court. Debate has centered on whether such a court would have power to adjudicate criminal, civil and administrative cases, whether the court should be at a district or appellate level, and whether judges should be permanently assigned or rotated through the court. Ministry of Justice contacts inform AIT that the Judicial Yuan will formally propose the Court in next Legislative session.

Illegal Photocopying

17. (U) Although illegal photocopying continues to be a problem on university campuses, the American Association of Publishers (AAP) tells AIT it is generally satisfied with the increased awareness and level of cooperation they are receiving from enforcement officials. In conjunction with AAP, the National Police conducted a series of raids and inspections in mid and late September around many of the major universities in Taiwan in an attempt to discourage illegal photocopying of textbooks at the beginning of the new fall term. AAP plans to work with the Ministry of Education to develop policy guidelines that discourage illegal photocopying.

Enforcement Actions: Legalization of the IETF

18. (U) On November 1, 2004 Taiwan officially institutionalized what had been an ad hoc anti-piracy task force. The Integrated Enforcement Task Force (IETF) is a 220-person police detail committed to combating retail optical disk piracy. During the first nine months of 2004, the IETF conducted 2,964 inspections, made almost 800 arrests for optical media piracy, and confiscated over 590,000 illegal CDs. Despite this record of improved enforcement, stakeholders were concerned that the ad hoc nature of the task force was detrimental to recruitment of personnel and betrayed a lack of commitment to continued enforcement actions. The task force is now a permanent body that falls under the jurisdiction of the national police but will be funded by the Ministry of Economic Affairs. There are reportedly plans to increase the number of personnel to 600 by 2006.

Major Blow to Optical Media Piracy

19. (U) In May, Taiwan police, Coast Guard, and Ministry of Justice (MOJ) officials conducted a series of raids in the Taichung area that resulted in the seizure of over 400,000 illegal CDs, 400 CD burners, and one unlicensed CD injection machine. Eight suspects were arrested and seven were indicted. The suspects could face sentences as long as five years imprisonment. According to the Taichung Prosecutors Office, the suspects were eligible for bail and are currently not in custody. Police estimate the group was responsible for as much as ten percent of all counterfeit optical media produced in Taiwan.

Attacking Counterfeit Pharmaceuticals

10. (U) The MOJ has made the investigation of pharmaceutical cases a top priority. In October, Taichung enforcement authorities raided nine separate locations in Central and Southern Taiwan and seized almost one million counterfeit tablets of Viagra, Reductil, and Stilnox. Four persons were arrested, including a licensed pharmacist. Subsequent investigation suggests the tablets were produced in China and smuggled into Taiwan, but that the high-quality packaging and printing was done in Taiwan. The Ministry of Justice Investigation Bureau (MJIB) has assured AIT that the investigation into the source of the tablets, as well as the printing and packaging materials, continues. MOJ and DOH inspections of pharmacies in the weeks following the arrests showed a marked decrease in the incidents of counterfeit pharmaceutical products for retail sale, according to MOJ sources.

Additional Enforcement Actions

11. (U) In June, the IETF uncovered an optical disk piracy

operation outside of Taipei that resulted in the confiscation of over 15,000 illegal optical disks, including software, games, VCDs, pornography, and music. Twenty seven CD burners and 4 computers were also seized. In addition to the actions by IETF, the National Police Administration, through September reported over 3,000 raids on suspected IP violators and arrested over 3,000 suspects for IP related crimes. The Joint Optical Disc Enforcement Task Force (JODE) conducted over 800 raids during the same time period, including 300 at night. They found six instances of illegal optical disk manufacturing, closed eight illegal manufacturing plants, seized five optical disk machines and over 100,000 optical disks. Taiwan Customs seized over 64,000 illegal optical disks through September 2004, including more than 16,000 pirated PS2 optical disks. Customs also seized substantial amounts of counterfeit branded goods, including purses and clothing, perfume and other trademarked goods. Most of these products allegedly originated in China.

Public Education and Training -----

112. (U) The Ministry of Economic Affairs has created a reward program for informants in optical disk piracy cases. At an awards ceremony in June 2004, MOEA paid over NT\$17 million to informants and law enforcement for tips that led to the closure of five illegal optical media plants and confiscation of nine injection molders, 19 other pieces of heavy manufacturing equipment and over 630,000 pirated disks.

113. (U) In April 2004, TIPO began to publish a weekly IPR column in one of Taiwan's most important business dailies. The column aims to educate business people on IPR related concepts. Since April 2004, IPR promotion advertisements have been posted in public areas such as the subway and in airports and broadcast on television.

114. (U) Training for law enforcement personnel, prosecutors and judges is occurring regularly. In May, TIPO conducted training for 137 new IETF officers. Representatives from the US Department of Justice and the FBI in September held a seminar for law enforcement on combating cyber-crime. In April, the Ministry of Justice and Chiao Tung University conducted training on IPR crimes for prosecutors. TIPO, in cooperation with Taiwan National Politics University's IPR Center, will host additional training for judges and prosecutors November 25-26.

Unfinished business: DE protection... -----

115. (SBU) During AUSTRIA Charles Freeman's July visit to Taiwan, the DOH committed to draft and submit to the LY a bill to protect research-based pharmaceutical and chemical data. After consultations with a resistant local industry, DOH finally submitted the draft bill to the Executive Yuan for submission to the LY Procedure Committee in late September. However, due to political disputes in the LY tied to the upcoming LY elections in December, the Procedure Committee has not yet assigned the bill to the Environment, Science and Health Committee for consideration. With the LY in recess until after the December 11 elections and the LY session scheduled to conclude in late January, it will be difficult to pass this bill in the current session.

116. (SBU) The draft bill does address most of industry's concerns for Data Exclusivity (DE). New chemical entities would be granted a five-year period of DE protection. New indications would be protected for three years under the draft bill. The innovative research pharmaceutical industry has raised concerns about one provision that would require new products to register in Taiwan within three years of its initial sale in another market or face the loss of DE protection in Taiwan. Industry worries that three years will not allow them to complete Taiwan's complex registration requirements. In an October 11 letter, the Minister of Health, assured AIT that companies need only file for registration within three years to avail themselves of DE protection. He wrote that there is no need to complete the registration procedure within three years to benefit from the provisions of the proposed law.

...and Internet Piracy -----

117. (U) Although indictments against Peer to Peer (P2P) file sharing companies EZPeer and Kuro were filed in December 2003, the legal process to restrict the use of these services for copyright infringing file trading between subscribers is glacially slow. The cases are still under consideration by the Taiwan courts. In response to a lawsuit brought by the International Federation of Phonographic Industries (IFPI), the P2P sites posted a list of songs that users were urged

not to download, but the operators of the sites did not make any efforts to prevent the sharing of the specified copyrighted works. The Taipei prosecutors office has made the this case a priority, assigning two expert prosecutors to handle the case, but is still awaiting judicial action. While Taiwan enforcement authorities are becoming increasingly aware of the problem of internet piracy, they have yet to articulate a coherent strategy for dealing with this threat.

18. (SBU) AIT Assessment: As a result of a united USG interagency front, the IPR environment in Taiwan is steadily improving. Many of the issues highlighted in the 2004 Special 301 Review have been addressed, including better cooperation to combat photocopying, effective efforts to resolve conflicts over power of attorney requirements, and institutionalization of the Integrated Enforcement Task Force. Taiwan's efforts to address serious problems warrant its removal from the Priority Watch List. However, work remains to be done in several areas, including passing legislation to protect pharmaceutical data and addressing growing concerns about internet piracy and the slow legal process for protecting IPR. Until these remaining concerns are addressed, it is premature to consider dropping Taiwan from the Special 301 Watch List. End Comment.
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